NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERGIO PEREZ-VALENCIA, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 04-75109 Agency No. A44-560-238* MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 9, 2008
Pasadena, California

Before: BEEZER, HALL, and SILVERMAN, Circuit Judges.

Sergio Perez-Valencia petitions for review of the Board of Immigration Appeals's final order of removal. We have jurisdiction over the petition for review pursuant to 8 U.S.C. § 1252(a)(1) and review the immigration judge's decision as the final agency decision. *Lanza v. Ashcroft*, 389 F.3d 917, 925 (9th Cir. 2004).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

We review questions of law de novo, *Martinez-Garcia v. Ashcroft*, 366 F.3d 732, 733 (9th Cir. 2004), and factual findings for substantial evidence. *Nakamoto v. Ashcroft*, 363 F.3d 874, 881-82 (9th Cir. 2004). The petition for review is denied, in part, and dismissed, in part.

The immigration judge found that Perez-Valencia procured his 1994 visa and admission by willfully misrepresenting two material facts: his prior conviction and his prior deportation. Perez-Valencia was thus removable pursuant to 8 U.S.C. § 1227(a)(1)(A) as inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i). Perez-Valencia argues, first, that the documents in the record are insufficient to establish the misrepresentation, and second, that he disclosed his 1988 California conviction for child molesting during a medical evaluation. The government must prove by "clear, unequivocal and convincing" evidence the factual grounds for removal. *Nakamoto*, 363 F.3d at 881-82. Therefore, we consider "whether substantial evidence supports a finding by clear and convincing evidence" that Perez-Valencia sought to procure a visa, documentation or admission by fraud or by willfully misrepresenting whether he had a prior 1988 criminal conviction and 1989 deportation. *Id.* at 882.

The certified copies of Perez-Valencia's visa application, signed under oath on April 20, 1994, 1988 California conviction for child molesting, prior

deportation order, and 1989 warrant of deportation clearly and convincingly prove that Perez-Valencia willfully misrepresented his prior conviction and deportation. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (holding that knowledge of the falsity is sufficient to establish fraud or a willful misrepresentation).

Moreover, the record does not compel a contrary conclusion that Perez-Valencia revealed the 1988 child molesting conviction during a medical examination. Rather, the evidence supports the conclusion that he merely revealed a 1985 disorderly conduct conviction.

The IJ also found that Perez-Valencia was removable pursuant to 8 U.S.C. § 1227(a)(1)(A) as inadmissible under 8 U.S.C. § 1182(a)(9)(A)(i) (inadmissiable because previously removed within five years). For the first time in these proceedings, he argues that 8 U.S.C. § 1182(a)(9)(A)(i) does not apply to prior final orders of deportation or exclusion. However, Perez-Valencia did not exhaust his administrative remedies for this argument. Therefore, we lack jurisdiction to consider the claim. 8 U.S.C. § 1252(d)(1); *Rendon v. Mukasey*, ___ F.3d ____, 2008 WL 726354, at * 2 (9th Cir. Mar. 19, 2008); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Finally, Perez-Valencia argues that he is statutorily eligible for a § 212(h) waiver. However, he does not challenge the IJ's finding that he lacked the

requisite seven years of continuous residence. His failure to meet the seven year residency requirement renders him ineligible for § 212(h) relief. 8 U.S.C. § 1182(h).

PETITION FOR REVIEW DENIED, IN PART, AND DISMISSED, IN PART.